



March 15, 2005

ENGROSSED SENATE BILL No. 414

DIGEST OF SB 414 (Updated March 10, 2005 1:14 pm - DI 92)

Citations Affected: IC 6-3.1; noncode.

Synopsis: EDGE credit applications. Provides that the economic development corporation shall, in evaluating an EDGE credit application to retain existing jobs in Indiana submitted after December 31, 2005, determine whether the average compensation paid by the applicant exceeds: (1) the average compensation paid to employees working in the same industry sector within the county in which the applicant's business is located, if there is more than one business in that industry sector in the county; (2) the average compensation paid to employees working in the same industry sector in Indiana, if the applicant's business is the only business in that industry sector in the county but there is more than one business in that industry sector in Indiana; or (3) twice the federal minimum wage, if the applicant's business is the only business in that industry sector in Indiana. Provides that the corporation may, in evaluating an EDGE credit application to create existing jobs in Indiana after December 31, 2005, consider whether the average wage paid by the applicant exceeds the average wage paid to: (1) all employees working in the same industry sector in the county in which the applicant's business is located, if there

(Continued next page)

Effective: January 1, 2005 (retroactive); upon passage; July 1, 2005.

Ford

(HOUSE SPONSORS — HARRIS T, BORROR)

January 13, 2005, read first time and referred to Committee on Economic Development and Technology.

February 14, 2005, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

February 24, 2005, amended, reported favorably — Do Pass.

February 28, 2005, read second time and ordered engrossed. Engrossed.

March 1, 2005, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Ways and Means.

March 14, 2005, amended, reported — Do Pass.

ES 414—LS 7829/DI 103+



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is more than one business in that industry sector in the county; (2) all employees working in the same industry sector in Indiana, if the applicant's business is the only business in that industry sector in the county but there is more than one business in that industry sector in Indiana; or (3) all employees working in the county in which the applicant's business is located, if the applicant's business is the only business in that industry sector in Indiana. Removes the requirement that an applicant provide evidence of a competing job site. Reduces the number of employees the applicant must employ from 200 to 75. Changes the minimum ratio of local incentives to EDGE credits from \$1.50 per \$3 of EDGE credits to \$1 per \$2 of EDGE credits. Provides an alternative method for calculating the qualified research credit of a qualified advanced manufacturing company. Creates a certified advanced manufacturing investment tax credit. Creates a refundable advanced manufacturing job retention tax credit.

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March 15, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 414

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
3 Sec. 1. ~~As used in this~~ **The following definitions apply throughout**
4 **this chapter:**

5 (1) **"Automotive electronics" involves the techniques and**
6 **equipment used to achieve automatic operation or control of**
7 **equipment, a process, or a system.**

8 (2) **"Base amount" means base amount (as defined in Section**
9 **41(c) of the Internal Revenue Code as in effect on January 1,**
10 **2001).**

11 (3) **"Base period Indiana qualified research expense" means base**
12 **period research expense that is incurred for research conducted in**
13 **Indiana.**

14 (4) **"Base period research expense" means base period research**
15 **expense (as defined in Section 41(c) of the Internal Revenue Code**
16 **before January 1, 1990).**

17 (5) **"Indiana qualified research expense" means qualified research**

ES 414—LS 7829/DI 103+



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expense that is incurred for research conducted in Indiana.

(6) "Qualified advanced manufacturing company" means any business entity that:

- (A) maintains one (1) or more manufacturing facilities in Indiana employing during each month of the taxpayer's taxable year at least two thousand five hundred (2,500) employees in full-time employment positions that pay on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent;**
- (B) is engaged primarily in the business of automotive electronics, aerospace, defense, robotics, or engineering design technology, manufacturing, or production; and**
- (C) has been designated as a qualified advanced manufacturing company by executive order of the governor.**

(7) "Qualified research expense" means qualified research expense (as defined in Section 41(b) of the Internal Revenue Code as in effect on January 1, 2001).

(8) "Pass through entity" means:

- (+) (A) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);**
- (-) (B) a partnership;**
- (*) (C) a limited liability company; or**
- (x) (D) a limited liability partnership.**

(9) "Research expense tax credit" means a credit provided under this chapter against any tax otherwise due and payable under IC 6-3.

(10) "Taxpayer" means an individual, a corporation, a limited liability company, a limited liability partnership, a trust, or a partnership that has any tax liability under IC 6-3 (adjusted gross income tax).

SECTION 2. IC 6-3.1-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec 2.5. (a) A qualified advanced manufacturing company that incurs Indiana qualified research expense in a particular taxable year may elect to calculate the research expense tax credit under this section instead of under section 2 of this chapter.

(b) An election under this section applies to the taxable year for which the election is made and all succeeding taxable years unless the election is revoked with the consent of the department. An election must be made in the manner and on the form prescribed

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by the department.

(c) Except as provided in subsection (d), the credit is equal to one percent (1%) multiplied by:

(1) the taxpayer's Indiana qualified research expenses for the taxable year; minus

(2) fifty percent (50%) of the taxpayer's average Indiana qualified research expenses for the three (3) taxable years preceding the taxable year for which the credit is being determined.

(d) If the taxpayer does not have Indiana qualified research expenses in any one (1) of the three (3) taxable years preceding the taxable year for which the credit is being determined, the credit under this section is equal to one percent (1%) of the Indiana qualified research expenses for the taxable year.

SECTION 3. IC 6-3.1-13-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.3. As used in this chapter, "NAICS" refers to the North American Industry Classification System.**

SECTION 4. IC 6-3.1-13-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.5. As used in this chapter, "NAICS industry sector" refers to industries that share the same first two (2) digits of the six (6) digit NAICS code assigned to industries in the NAICS Manual of the United States Office of Management and Budget.**

SECTION 5. IC 6-3.1-13-15.5, AS AMENDED BY P.L.4-2005, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:**

(1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.

(2) The applicant provides evidence that there is at least one (1) other competing site outside Indiana that is being considered for the project or for the relocation of jobs.

(3) A disparity is identified, using the best available data, in the projected costs for the applicant's project in Indiana compared with the costs for the project in the competing site.

(4) (2) The applicant is engaged in research and development,

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1 manufacturing, or business services, ~~(as defined in~~ **according to**
 2 the ~~Standard Industrial Classification~~ **NAICS** Manual of the
 3 United States Office of Management and Budget.

4 ~~(5)~~ **(3)** The average compensation (including benefits) provided
 5 to the applicant's employees during the applicant's previous fiscal
 6 year exceeds:

7 **(A) for an application submitted before January 1, 2006,**
 8 the average compensation paid during that same period to all
 9 employees in the county in which the applicant's business is
 10 located by at least five percent (5%); or

11 **(B) for an application submitted after December 31, 2005,**
 12 **the amount specified by the calculation associated with one**
 13 **(1) of the following descriptions that characterizes the**
 14 **number of businesses in the NAICS industry sector to**
 15 **which the applicant's business belongs:**

16 **(i) If there is more than one (1) business in the same**
 17 **NAICS industry sector in the county in which the**
 18 **applicant's business is located, determine the average**
 19 **compensation paid during that same period to all**
 20 **employees working in the same NAICS industry sector**
 21 **in the county in which the applicant's business is located**
 22 **multiplied by one hundred five percent (105%).**

23 **(ii) If the applicant's business is the only business in the**
 24 **same NAICS industry sector in the county in which the**
 25 **applicant's business is located but there is more than one**
 26 **(1) business in the same NAICS industry sector in**
 27 **Indiana, determine the average compensation paid**
 28 **during that same period to all employees working in the**
 29 **NAICS industry sector throughout Indiana multiplied by**
 30 **one hundred five percent (105%).**

31 **(iii) If the applicant's business is the only business in the**
 32 **same NAICS industry sector in Indiana, determine the**
 33 **compensation for that same period corresponding to the**
 34 **federal minimum wage multiplied by two hundred**
 35 **percent (200%).**

36 ~~(6)~~ **(4)** The applicant employs at least ~~two hundred (200)~~
 37 **seventy-five (75)** employees in Indiana.

38 ~~(7)~~ **(5)** The applicant has prepared a plan for the use of the credits
 39 under this chapter for:

40 **(A) investment in facility improvements or equipment and**
 41 **machinery upgrades, repairs, or retrofits; or**

42 **(B) other direct business related investments, including but not**

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limited to training.

~~(8)~~ (6) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

~~(9)~~ (7) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

~~(10)~~ (8) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

~~(11)~~ (9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed at least one dollar and fifty cents ~~(\$1.50)~~ (\$1) of local incentives with respect to the retention of jobs for every ~~three~~ two dollars ~~(\$3)~~ (\$2) in credits provided under this chapter. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

~~(12)~~ (10) The credit is not prohibited by section 16 of this chapter.

SECTION 6. IC 6-3.1-13-17, AS AMENDED BY P.L.4-2005, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. In determining the credit amount that should be awarded to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana, the corporation ~~shall~~ may take into consideration the following factors:

(1) The economy of the county where the projected investment is to occur.

(2) The potential impact on the economy of Indiana.

(3) The incremental payroll attributable to the project.

(4) The capital investment attributable to the project.

(5) The amount the average wage paid by the applicant exceeds the average wage paid:

(A) within the county in which the project will be located, in the case of an application submitted before January 1, 2006; or

(B) in the case of an application submitted after December 31, 2005:

(i) to all employees working in the same NAICS industry sector in the county in which the applicant's business is

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located, if there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located;

(ii) to all employees working in the same NAICS industry sector in Indiana in which the applicant's business is located, if the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana; or

(iii) to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector.

(6) The costs to Indiana and the affected political subdivisions with respect to the project.

(7) The financial assistance and incentives that are otherwise provided by Indiana and the affected political subdivisions.

As appropriate, the corporation shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. ~~In the case of an applicant under section 15.5 of this chapter, the corporation shall consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside Indiana and the projected costs for the applicant's project in Indiana.~~

SECTION 7. IC 6-3.1-13-19.5, AS AMENDED BY P.L.4-2005, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19.5. (a) In the case of a credit awarded for a project to retain existing jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the business that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit. An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A requirement that the applicant shall annually report the

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following to the corporation:

(A) The number of employees who are employed in Indiana by the applicant.

(B) The compensation (including benefits) paid to the applicant's employees in Indiana.

(C) The amount of the:

(i) facility improvements;

(ii) equipment and machinery upgrades, repairs, or retrofits; or

(iii) other direct business related investments, including training.

(6) A requirement that the applicant shall provide written notification to the director and the corporation not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.

~~(7) A requirement that the chief executive officer of the company applying for a credit under this chapter must verify under penalty of perjury that the disparity between projected costs of the applicant's project in Indiana compared with the costs for the project in a competing site is real and actual.~~

~~(8)~~ (7) Any other performance conditions that the corporation determines are appropriate.

(b) An agreement between an applicant and the corporation must be submitted to the budget committee for review and must be approved by the budget agency before an applicant is awarded a credit under this chapter for a project to retain existing jobs in Indiana.

SECTION 8. IC 6-3.1-13-21, AS AMENDED BY P.L.4-2005, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same

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1 agreement.

2 (c) ~~This~~ Subsection (d) applies:

3 (1) only to a pass through entity that is a limited liability company
4 or a limited liability partnership owned wholly or in part by an
5 electric cooperative incorporated under IC 8-1-13; and

6 (2) if, at the request of ~~a~~ the pass through entity, if the corporation
7 finds that the amount of the average wage to be paid by the pass
8 through entity will be at least double the average wage paid:
9 within

10 (A) in the county in which the project will be located, in the
11 case of an application submitted before January 1, 2006;
12 or

13 (B) to all employees working in the same NAICS industry
14 sector in the county in which the project will be located, in
15 the case of an application submitted after December 31,
16 2005.

17 (d) The corporation may determine that:

18 (1) ~~the~~ a credit shall be claimed by the pass through entity
19 described in subsection (c); and

20 (2) if the credit exceeds the pass through entity's state income tax
21 liability for the taxable year, the excess shall be refunded to the
22 pass through entity.

23 If the corporation grants a refund directly to a pass through entity under
24 this subsection, the pass through entity shall claim the refund on forms
25 prescribed by the department of state revenue.

26 SECTION 9. IC 6-3.1-13-26, AS AMENDED BY P.L.4-2005,
27 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 UPON PASSAGE]: Sec. 26. (a) The economic development for a
29 growing economy fund is established to be used exclusively for the
30 purposes of this chapter, and IC 6-3.1-26, and IC 6-3.1-26.2, including
31 paying for the costs of administering this chapter, and IC 6-3.1-26, and
32 IC 6-3.1-26.2. The fund shall be administered by the corporation.

33 (b) The fund consists of collected fees, appropriations from the
34 general assembly, and gifts and grants to the fund.

35 (c) The treasurer of state shall invest the money in the fund not
36 currently needed to meet the obligations of the fund in the same
37 manner as other public funds may be invested. Interest that accrues
38 from these investments shall be deposited in the fund.

39 (d) The money in the fund at the end of a state fiscal year does not
40 revert to the state general fund but remains in the fund to be used
41 exclusively for the purposes of this chapter. Expenditures from the fund
42 are subject to appropriation by the general assembly and approval by

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the budget agency.

SECTION 10. IC 6-3.1-13-27, AS AMENDED BY P.L.4-2005, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Subject to all other requirements of this chapter, the corporation may award a tax credit under this chapter to a nonprofit organization that is a high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5) if:

(1) the nonprofit organization:

(A) is a taxpayer (as defined in section 10 of this chapter); and

(B) meets all requirements of this chapter; and

(2) all of the following conditions are satisfied:

(A) The wages of at least seventy-five percent (75%) of the organization's total workforce in Indiana must be equal to at least two hundred percent (200%) of the average county wage paid:

(i) in the county in which the project will be located, as determined by the corporation, in the case of an application submitted before January 1, 2006; or

(ii) to all employees working in the same NAICS industry sector in the county where in which the project for which the credit is granted will be located, in the case of an application submitted after December 31, 2005.

(B) The organization must make an investment of at least fifty million dollars (\$50,000,000) in capital assets.

(C) The affected political subdivision must provide substantial financial assistance to the project.

(D) The incremental payroll attributable to the project must be at least ten million dollars (\$10,000,000) annually.

(E) The organization agrees to pay the ad valorem property taxes on the organization's real and personal property that would otherwise be exempt under IC 6-1.1-10.

(F) The organization does not receive any deductions from the assessed value of the organization's real and personal property under IC 6-1.1-12 or IC 6-1.1-12.1.

(G) The organization pays all of the organization's ad valorem property taxes to the taxing units in the taxing district in which the project is located.

(H) The project for which the credit is granted must be located in a county having a population of more than one hundred eighty thousand (180,000) but less than one hundred eighty-two thousand seven hundred ninety (182,790).

(b) Notwithstanding section 6(a) of this chapter, the corporation

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may award credits to an organization under subsection (a) if:

- (1) the organization met all other conditions of this chapter at the time of the applicant's location or expansion decision;
- (2) the applicant is in receipt of a letter from the department of commerce stating an intent to pursue a credit agreement; and
- (3) the letter described in subdivision (2) is issued by the department of commerce not later than January 1, 2000.

SECTION 11. IC 6-3.1-26.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Chapter 26.2. Advanced Manufacturing Investment and Job Retention Credits

Sec. 1. As used in this chapter, "advanced manufacturing jobs" means employment in automotive electronics (as defined in IC 6-3.1-4-1), aerospace, defense, robotics, or engineering design technology, manufacturing, or production that pays on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 2. (a) As used in this chapter, "certified advanced manufacturing investment" means the amount of a qualified advanced manufacturing company's expenditures for:

- (1) the purchase of new manufacturing equipment and tooling;
- (2) the purchase of new computers, software, and related equipment;
- (3) costs associated with the modernization of existing manufacturing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new manufacturing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the advanced manufacturing sector;

that are certified by the IEDC as being eligible for the credit under this chapter.

(b) The term does not include expenditures made before January 1, 2005, or after December 31, 2009.

Sec. 3. As used in this chapter, "full-time employee" has the meaning set forth in IC 6-3.1-13-4.

Sec. 4. As used in this chapter, "IEDC" refers to the Indiana economic development corporation established by IC 5-28-3-1.

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1 **Sec. 5.** As used in this chapter, "income tax withholdings"
 2 means the total amount withheld under IC 6-3-4-8 by the taxpayer
 3 during the taxable year from the compensation of employees.

4 **Sec. 6.** As used in this chapter, "qualified advanced
 5 manufacturing company" means a taxpayer that:

6 (1) maintains one (1) or more facilities in Indiana employing
 7 at least two thousand five hundred (2,500) full-time employees
 8 in advanced manufacturing jobs during each of the twelve
 9 (12) months preceding an application for a credit under this
 10 chapter; and

11 (2) has been designated as qualified by executive order of the
 12 governor.

13 **Sec. 7.** As used in this chapter, "qualified advanced
 14 manufacturing project" means a multiyear program of investment
 15 that:

16 (1) has a projected cost of at least seventy million dollars
 17 (\$70,000,000); and

18 (2) is undertaken by a qualified advanced manufacturing
 19 company at a location in Indiana for the purposes listed in
 20 section 2 of this chapter.

21 **Sec. 8.** As used in this chapter, "state tax liability" means a
 22 taxpayer's total tax liability incurred under IC 6-3-1 through
 23 IC 6-3-7 (the adjusted gross income tax), as computed after the
 24 application of all credits that under IC 6-3.1-1-2 are to be applied
 25 before the credit provided by this chapter.

26 **Sec. 9.** As used in this chapter, "taxpayer" means an individual,
 27 a corporation, a partnership, or other entity that has state tax
 28 liability.

29 **Sec. 10.** The IEDC may make credit awards under this chapter
 30 to encourage advanced manufacturing investment and to foster
 31 expansion and retention of advanced manufacturing jobs in
 32 Indiana.

33 **Sec. 11.** A taxpayer that:

34 (1) is awarded a tax credit under this chapter by the IEDC;
 35 and

36 (2) complies with the conditions set forth in this chapter and
 37 the agreement entered into with the IEDC under this chapter;
 38 is entitled to apply the credit against the taxpayer's state tax
 39 liability in a taxable year.

40 **Sec. 12.** (a) A qualified advanced manufacturing company is
 41 entitled to a credit against the taxpayer's state tax liability for a
 42 taxable year if the taxpayer makes a certified advanced

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1 manufacturing investment in a qualified advanced manufacturing
2 project during that year.

3 (b) The amount of the credit to which a taxpayer is entitled is
4 the certified advanced manufacturing investment made by the
5 taxpayer during the taxable year multiplied by one percent (1%).

6 (c) A taxpayer may carry forward an unused credit under this
7 section for not more than three (3) consecutive taxable years
8 beginning with the taxable year after the taxable year in which the
9 taxpayer makes the certified advanced manufacturing investment.

10 (d) A taxpayer may carry forward a remainder for one (1) or
11 more different certified advanced manufacturing investments in
12 the same taxable year.

13 **Sec. 13. (a) A qualified advanced manufacturing company that**
14 **proposes a qualified advanced manufacturing project may claim**
15 **a job retention tax credit under this section equal to one percent**
16 **(1%) of the taxpayer's income tax withholdings attributable to**
17 **full-time employees working in advanced manufacturing jobs at**
18 **the qualified advanced manufacturing project site.**

19 (b) The duration of the tax credit shall be based on the number
20 of full-time advanced manufacturing jobs maintained at the
21 qualified advanced manufacturing project site during the term of
22 the credit, and shall be determined as follows:

23 (1) A credit shall be awarded for five (5) consecutive taxable
24 years to a taxpayer that maintains at least two thousand five
25 hundred (2,500) advanced manufacturing jobs at the qualified
26 advanced manufacturing project site.

27 (2) A credit shall be awarded for four (4) consecutive taxable
28 years to a taxpayer that maintains at least two thousand two
29 hundred fifty (2,250) but less than two thousand five hundred
30 (2,500) advanced manufacturing jobs at the qualified
31 advanced manufacturing project site.

32 (3) A credit shall be awarded for three (3) consecutive taxable
33 years to a taxpayer that maintains at least two thousand
34 (2,000) but less than two thousand two hundred fifty (2,250)
35 advanced manufacturing jobs at the qualified advanced
36 manufacturing project site.

37 (c) If during the term of the credit the number of employees
38 drops below the amount required in subsection (b)(1), (b)(2), or
39 (b)(3), the duration of the credit shall be adjusted accordingly.

40 (d) The credit amount claimed for a taxable year under this
41 section may exceed the taxpayer's state tax liability for the taxable
42 year, in which case the excess shall be refunded to the taxpayer.

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1 **Sec. 14. (a) A qualified advanced manufacturing company may**
 2 **apply to the IEDC to enter into an agreement for a tax credit**
 3 **under:**

- 4 (1) section 12 of this chapter;
 5 (2) section 13 of this chapter; or
 6 (3) both sections 12 and 13 of this chapter.

7 **(b) The IEDC shall prescribe the form of the application.**

8 **Sec. 15. After receipt of an application, the IEDC may enter into**
 9 **an agreement with the applicant for a tax credit under section 12**
 10 **or 13 of this chapter, or both, if the IEDC determines that all the**
 11 **following conditions exist:**

- 12 (1) The taxpayer has prepared a plan for the use of credits
 13 under this chapter for a qualified advanced manufacturing
 14 project.
 15 (2) The qualified advanced manufacturing project will result
 16 in the growth or retention of full-time advanced
 17 manufacturing jobs in Indiana.
 18 (3) The qualified advanced manufacturing project is
 19 economically sound and will benefit the citizens of Indiana by
 20 strengthening the economy of Indiana.
 21 (4) Receiving the tax credit is a major factor in the taxpayer's
 22 decision to go forward with the qualified advanced
 23 manufacturing project.
 24 (5) The average wage that will be paid by the taxpayer to its
 25 employees at the site of the qualified advanced manufacturing
 26 project after the credit is given will be at least equal to four
 27 hundred percent (400%) of the hourly minimum wage under
 28 IC 22-2-2-4 or its equivalent.
 29 (6) The total cost of the qualified advanced manufacturing
 30 project will be at least seventy million dollars (\$70,000,000).
 31 (7) The qualified advanced manufacturing project will be
 32 completed within five (5) consecutive years, including the first
 33 year for which the credit is granted.
 34 (8) One (1) or more political subdivisions in which the
 35 qualified advanced manufacturing project is located have
 36 agreed to provide substantial financial support to the
 37 qualified advanced manufacturing project.

38 **Sec. 16. The IEDC shall enter into an agreement with an**
 39 **applicant that is awarded a credit under this chapter. The**
 40 **agreement must include all the following:**

- 41 (1) A detailed description of the qualified advanced
 42 manufacturing project that is the subject of the agreement.

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(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability in the taxable year that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations at the qualified advanced manufacturing project site for at least ten (10) years, including the term of the tax credit.

(6) A requirement that the taxpayer shall pay an average wage to its advanced manufacturing employees at the qualified advanced manufacturing project site in each taxable year that a tax credit is available that equals at least four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(7) A requirement that the taxpayer make at least seventy million dollars (\$70,000,000) in certified advanced manufacturing investment at the qualified advanced manufacturing project site before December 31, 2009.

(8) For a taxpayer awarded a certified advanced manufacturing investment credit under section 12 of this chapter, a requirement that the taxpayer maintain at least two thousand five hundred (2,500) full-time employees in advanced manufacturing jobs in Indiana during the term of the tax credit.

(9) For a taxpayer awarded an advanced manufacturing jobs retention credit under section 13 of this chapter, a requirement that the taxpayer maintain:

(A) at least two thousand five hundred (2,500) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for five (5) years;

(B) at least two thousand two hundred fifty (2,250) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for four (4) years; or

(C) at least two thousand (2,000) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for three (3) years; and

a requirement that the taxpayer maintain at least two thousand (2,000) advanced manufacturing jobs at the

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1 qualified advanced manufacturing project site for at least ten
2 (10) years, including the term of the tax credit.

3 (10) Any other performance conditions that the IEDC
4 determines are appropriate.

5 Sec. 17. (a) If the IEDC determines that a taxpayer that has
6 received a credit under this chapter is not complying with the
7 requirements of the tax credit agreement or all the provisions of
8 this chapter, the IEDC shall, after giving the taxpayer an
9 opportunity to explain the noncompliance, notify the department
10 of state revenue of the noncompliance and request an assessment.

11 (b) The department of state revenue, with the assistance of the
12 IEDC, shall state the amount of the assessment, which may not
13 exceed the sum of:

14 (1) fifty percent (50%) of any credits previously awarded
15 under section 12 of this chapter; and

16 (2) one hundred percent (100%) of any credits previously
17 awarded under section 13 of this chapter.

18 (c) After receiving the notice, the department of state revenue
19 shall make an assessment against the taxpayer under IC 6-8.1.

20 Sec. 18. Notwithstanding the other provisions of this chapter, a
21 taxpayer is not entitled to a credit for a certified advanced
22 manufacturing investment made after December 31, 2009.
23 However, this section may not be construed to prevent a taxpayer
24 from carrying an unused tax credit attributable to a certified
25 advanced manufacturing investment made before January 1, 2010,
26 forward to a taxable year beginning after December 31, 2009, in
27 the manner provided by section 12 of this chapter.

28 SECTION 12. [EFFECTIVE JANUARY 1, 2005
29 (RETROACTIVE)] IC 6-3.1-4-1, as amended by this act, and
30 IC 6-3.1-4-2.5 and IC 6-3.1-26.2, both as added by this act, apply
31 only to taxable years beginning after December 31, 2004.

32 SECTION 13. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 414, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 21, after "2005," insert **"the amount specified by the calculation associated with one (1) of the following descriptions that characterizes the number of businesses in the NAICS industry sector to which the applicant's business belongs:**

(i) If there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located, determine the average compensation paid during that same period to all employees working in the same NAICS industry sector in the county in which the applicant's business is located multiplied by one hundred five percent (105%).

(ii) If the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana, determine the average compensation paid during that same period to all employees working in the NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).

(iii) If the applicant's business is the only business in the same NAICS industry sector in Indiana, determine the compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%)."

Page 2, delete lines 22 through 25.

Page 3, line 17, strike "shall" and insert **"may"**.

Page 3, line 28, delete "to all employees working in the same NAICS industry" and insert **"in the case of an application submitted after December 31, 2005:**

(i) to all employees working in the same NAICS industry sector in the county in which the applicant's business is located, if there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located;

(ii) to all employees working in the same NAICS industry

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sector in Indiana in which the applicant's business is located, if the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana; or

(iii) to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector."

Page 3, delete lines 29 through 31.

Page 3, line 39, strike "shall" and insert "**may**".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 414 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 414, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "budget and management." and insert "**Management and Budget.**".

Page 1, delete lines 13 through 17.

Delete pages 2 through 6, begin a new paragraph and insert:

"SECTION 3. IC 6-3.1-13-15.5, AS AMENDED BY P.L.4-2005, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

- (1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.
- (2) The applicant provides evidence that there is at least one (1) other competing site outside Indiana that is being considered for the project or for the relocation of jobs.
- (3) A disparity is identified, using the best available data, in the projected costs for the applicant's project in Indiana compared with the costs for the project in the competing site.
- (4) The applicant is engaged in research and development, manufacturing, or business services, ~~(as defined in~~ **in accordance with** the ~~Standard Industrial Classification~~ **NAICS** Manual of the United States Office of Management and Budget.
- (5) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds:

(A) for an application submitted before January 1, 2006, the average compensation paid during that same period to all employees in the county in which the applicant's business is located by at least five percent (5%); **or**

(B) for an application submitted after December 31, 2005, the amount specified by the calculation associated with one (1) of the following descriptions that characterizes the number of businesses in the NAICS industry sector to which the applicant's business belongs:

- (i) If there is more than one (1) business in the same NAICS industry sector in the county in which the**

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applicant's business is located, determine the average compensation paid during that same period to all employees working in the same NAICS industry sector in the county in which the applicant's business is located multiplied by one hundred five percent (105%).

(ii) If the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana, determine the average compensation paid during that same period to all employees working in the NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).

(iii) If the applicant's business is the only business in the same NAICS industry sector in Indiana, determine the compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(6) The applicant employs at least two hundred (200) employees in Indiana.

(7) The applicant has prepared a plan for the use of the credits under this chapter for:

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(8) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(9) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(10) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

(11) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed at least one dollar and fifty cents (\$1.50) of local incentives with respect to the retention of jobs for every three dollars (\$3) in credits provided under this chapter. For purposes

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of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

(12) The credit is not prohibited by section 16 of this chapter.

SECTION 4. IC 6-3.1-13-17, AS AMENDED BY P.L.4-2005, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. In determining the credit amount that should be awarded to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana, the corporation ~~shall~~ **may** take into consideration the following factors:

- (1) The economy of the county where the projected investment is to occur.
- (2) The potential impact on the economy of Indiana.
- (3) The incremental payroll attributable to the project.
- (4) The capital investment attributable to the project.
- (5) The amount the average wage paid by the applicant exceeds the average wage paid:

(A) within the county in which the project will be located, in the case of an application submitted before January 1, 2006; or

(B) in the case of an application submitted after December 31, 2005:

(i) to all employees working in the same NAICS industry sector in the county in which the applicant's business is located, if there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located;

(ii) to all employees working in the same NAICS industry sector in Indiana in which the applicant's business is located, if the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana; or

(iii) to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector.

(6) The costs to Indiana and the affected political subdivisions with respect to the project.

(7) The financial assistance and incentives that are otherwise

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provided by Indiana and the affected political subdivisions.

As appropriate, the corporation shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. In the case of an applicant under section 15.5 of this chapter, the corporation ~~shall~~ **may** consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside Indiana and the projected costs for the applicant's project in Indiana.

SECTION 5. IC 6-3.1-13-21, AS AMENDED BY P.L.4-2005, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

(c) ~~This~~ Subsection (d) applies:

- (1) only to a pass through entity that is a limited liability company or a limited liability partnership owned wholly or in part by an electric cooperative incorporated under IC 8-1-13; **and**
- (2) **if**, at the request of ~~a~~ the pass through entity, ~~if~~ the corporation finds that the amount of the average wage to be paid by the pass through entity will be at least double the average wage paid: ~~within~~

(A) **in the county in which the project will be located, in the case of an application submitted before January 1, 2006; or**

(B) **to all employees working in the same NAICS industry sector in the county in which the project will be located, in the case of an application submitted after December 31, 2005.**

(d) The corporation may determine that:

- (1) ~~the~~ **a** credit shall be claimed by the pass through entity **described in subsection (c); and**

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- (2) if the credit exceeds the pass through entity's state income tax liability for the taxable year, the excess shall be refunded to the pass through entity.

If the corporation grants a refund directly to a pass through entity under this subsection, the pass through entity shall claim the refund on forms prescribed by the department of state revenue.

SECTION 6. IC 6-3.1-13-27, AS AMENDED BY P.L.4-2005, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Subject to all other requirements of this chapter, the corporation may award a tax credit under this chapter to a nonprofit organization that is a high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5) if:

- (1) the nonprofit organization:
 - (A) is a taxpayer (as defined in section 10 of this chapter); and
 - (B) meets all requirements of this chapter; and
- (2) all of the following conditions are satisfied:
 - (A) The wages of at least seventy-five percent (75%) of the organization's total workforce in Indiana must be equal to at least two hundred percent (200%) of the average ~~county~~ wage paid:

- (i) in the county in which the project will be located, as determined by the corporation, in the case of an application submitted before January 1, 2006; or
 - (ii) to all employees working in the same NAICS industry sector in the county where in which the project for which the credit is granted will be located, in the case of an application submitted after December 31, 2005.

- (B) The organization must make an investment of at least fifty million dollars (\$50,000,000) in capital assets.
 - (C) The affected political subdivision must provide substantial financial assistance to the project.
 - (D) The incremental payroll attributable to the project must be at least ten million dollars (\$10,000,000) annually.
 - (E) The organization agrees to pay the ad valorem property taxes on the organization's real and personal property that would otherwise be exempt under IC 6-1.1-10.
 - (F) The organization does not receive any deductions from the assessed value of the organization's real and personal property under IC 6-1.1-12 or IC 6-1.1-12.1.
 - (G) The organization pays all of the organization's ad valorem property taxes to the taxing units in the taxing district in which the project is located.

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(H) The project for which the credit is granted must be located in a county having a population of more than one hundred eighty thousand (180,000) but less than one hundred eighty-two thousand seven hundred ninety (182,790).

(b) Notwithstanding section 6(a) of this chapter, the corporation may award credits to an organization under subsection (a) if:

- (1) the organization met all other conditions of this chapter at the time of the applicant's location or expansion decision;
- (2) the applicant is in receipt of a letter from the department of commerce stating an intent to pursue a credit agreement; and
- (3) the letter described in subdivision (2) is issued by the department of commerce not later than January 1, 2000."

and when so amended that said bill do pass.

(Reference is to SB 414 as printed February 15, 2005.)

KENLEY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 414, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 1. ~~As used in this~~ **The following definitions apply throughout this chapter:**

(1) "Automotive electronics" involves the techniques and equipment used to achieve automatic operation or control of equipment, a process, or a system.

(2) "Base amount" means base amount (as defined in Section 41(c) of the Internal Revenue Code as in effect on January 1, 2001).

(3) "Base period Indiana qualified research expense" means base period research expense that is incurred for research conducted in Indiana.

(4) "Base period research expense" means base period research expense (as defined in Section 41(c) of the Internal Revenue Code before January 1, 1990).

(5) "Indiana qualified research expense" means qualified research expense that is incurred for research conducted in Indiana.

(6) "Qualified advanced manufacturing company" means any business entity that:

- (A) maintains one (1) or more manufacturing facilities in Indiana employing during each month of the taxpayer's taxable year at least two thousand five hundred (2,500) employees in full-time employment positions that pay on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent;**
- (B) is engaged primarily in the business of automotive electronics, aerospace, defense, robotics, or engineering design technology, manufacturing, or production; and**
- (C) has been designated as a qualified advanced manufacturing company by executive order of the governor.**

(7) "Qualified research expense" means qualified research expense (as defined in Section 41(b) of the Internal Revenue Code as in effect on January 1, 2001).

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(8) "Pass through entity" means:

- (1) (A) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) (B) a partnership;
- (3) (C) a limited liability company; or
- (4) (D) a limited liability partnership.

(9) "Research expense tax credit" means a credit provided under this chapter against any tax otherwise due and payable under IC 6-3.

(10) "Taxpayer" means an individual, a corporation, a limited liability company, a limited liability partnership, a trust, or a partnership that has any tax liability under IC 6-3 (adjusted gross income tax).

SECTION 2. IC 6-3.1-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec 2.5. (a) A qualified advanced manufacturing company that incurs Indiana qualified research expense in a particular taxable year may elect to calculate the research expense tax credit under this section instead of under section 2 of this chapter.**

(b) An election under this section applies to the taxable year for which the election is made and all succeeding taxable years unless the election is revoked with the consent of the department. An election must be made in the manner and on the form prescribed by the department.

(c) Except as provided in subsection (d), the credit is equal to one percent (1%) multiplied by:

- (1) the taxpayer's Indiana qualified research expenses for the taxable year; minus**
- (2) fifty percent (50%) of the taxpayer's average Indiana qualified research expenses for the three (3) taxable years preceding the taxable year for which the credit is being determined.**

(d) If the taxpayer does not have Indiana qualified research expenses in any one (1) of the three (3) taxable years preceding the taxable year for which the credit is being determined, the credit under this section is equal to one percent (1%) of the Indiana qualified research expenses for the taxable year."

Page 2, strike lines 5 through 10.

Page 2, line 11, strike "(4)" and insert "(2)".

Page 2, line 15, strike "(5)" and insert "(3)".

Page 3, line 5, strike "(6)" and insert "(4)".

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Page 3, line 5, strike "two hundred (200)" and insert "**seventy-five (75)**".

Page 3, line 7, strike "(7)" and insert "**(5)**".

Page 3, line 13, strike "(8)" and insert "**(6)**".

Page 3, line 17, strike "(9)" and insert "**(7)**".

Page 3, line 20, strike "(10)" and insert "**(8)**".

Page 3, line 24, strike "(11)" and insert "**(9)**".

Page 3, line 26, strike "and fifty cents (\$1.50)" and insert "**(\$1)**".

Page 3, line 27, strike "three" and insert "**two**".

Page 3, line 28, strike "(\$3)" and insert "**(\$2)**".

Page 3, line 33, strike "(12)" and insert "**(10)**".

Page 4, line 32, strike "In the".

Page 4, strike line 33.

Page 4, line 34, delete "may".

Page 4, line 34, strike "consider the magnitude of the cost differential between the".

Page 4, strike lines 35 through 36.

Page 4, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 7. IC 6-3.1-13-19.5, AS AMENDED BY P.L.4-2005, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19.5. (a) In the case of a credit awarded for a project to retain existing jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the business that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit. An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A requirement that the applicant shall annually report the following to the corporation:

(A) The number of employees who are employed in Indiana by the applicant.

(B) The compensation (including benefits) paid to the applicant's employees in Indiana.

(C) The amount of the:

(i) facility improvements;

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- (ii) equipment and machinery upgrades, repairs, or retrofits;
or
- (iii) other direct business related investments, including training.

(6) A requirement that the applicant shall provide written notification to the director and the corporation not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.

~~(7) A requirement that the chief executive officer of the company applying for a credit under this chapter must verify under penalty of perjury that the disparity between projected costs of the applicant's project in Indiana compared with the costs for the project in a competing site is real and actual.~~

~~(8)~~ (7) Any other performance conditions that the corporation determines are appropriate.

(b) An agreement between an applicant and the corporation must be submitted to the budget committee for review and must be approved by the budget agency before an applicant is awarded a credit under this chapter for a project to retain existing jobs in Indiana."

Page 5, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 9. IC 6-3.1-13-26, AS AMENDED BY P.L.4-2005, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The economic development for a growing economy fund is established to be used exclusively for the purposes of this chapter, ~~and IC 6-3.1-26, and IC 6-3.1-26.2~~, including paying for the costs of administering this chapter, ~~and IC 6-3.1-26, and IC 6-3.1-26.2~~. The fund shall be administered by the corporation.

(b) The fund consists of collected fees, appropriations from the general assembly, and gifts and grants to the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter. Expenditures from the fund are subject to appropriation by the general assembly and approval by the budget agency."

Page 6, after line 40, begin a new paragraph and insert:

"SECTION 11. IC 6-3.1-26.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS

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[EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Chapter 26.2. Advanced Manufacturing Investment and Job Retention Credits

Sec. 1. As used in this chapter, "advanced manufacturing jobs" means employment in automotive electronics (as defined in IC 6-3.1-4-1), aerospace, defense, robotics, or engineering design technology, manufacturing, or production that pays on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 2. (a) As used in this chapter, "certified advanced manufacturing investment" means the amount of a qualified advanced manufacturing company's expenditures for:

- (1) the purchase of new manufacturing equipment and tooling;
- (2) the purchase of new computers, software, and related equipment;
- (3) costs associated with the modernization of existing manufacturing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new manufacturing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the advanced manufacturing sector;

that are certified by the IEDC as being eligible for the credit under this chapter.

(b) The term does not include expenditures made before January 1, 2005, or after December 31, 2009.

Sec. 3. As used in this chapter, "full-time employee" has the meaning set forth in IC 6-3.1-13-4.

Sec. 4. As used in this chapter, "IEDC" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 5. As used in this chapter, "income tax withholdings" means the total amount withheld under IC 6-3-4-8 by the taxpayer during the taxable year from the compensation of employees.

Sec. 6. As used in this chapter, "qualified advanced manufacturing company" means a taxpayer that:

- (1) maintains one (1) or more facilities in Indiana employing at least two thousand five hundred (2,500) full-time employees in advanced manufacturing jobs during each of the twelve (12) months preceding an application for a credit under this

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chapter; and

(2) has been designated as qualified by executive order of the governor.

Sec. 7. As used in this chapter, "qualified advanced manufacturing project" means a multiyear program of investment that:

(1) has a projected cost of at least seventy million dollars (\$70,000,000); and

(2) is undertaken by a qualified advanced manufacturing company at a location in Indiana for the purposes listed in section 2 of this chapter.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax), as computed after the application of all credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or other entity that has state tax liability.

Sec. 10. The IEDC may make credit awards under this chapter to encourage advanced manufacturing investment and to foster expansion and retention of advanced manufacturing jobs in Indiana.

Sec. 11. A taxpayer that:

(1) is awarded a tax credit under this chapter by the IEDC; and

(2) complies with the conditions set forth in this chapter and the agreement entered into with the IEDC under this chapter; is entitled to apply the credit against the taxpayer's state tax liability in a taxable year.

Sec. 12. (a) A qualified advanced manufacturing company is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a certified advanced manufacturing investment in a qualified advanced manufacturing project during that year.

(b) The amount of the credit to which a taxpayer is entitled is the certified advanced manufacturing investment made by the taxpayer during the taxable year multiplied by one percent (1%).

(c) A taxpayer may carry forward an unused credit under this section for not more than three (3) consecutive taxable years beginning with the taxable year after the taxable year in which the taxpayer makes the certified advanced manufacturing investment.

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(d) A taxpayer may carry forward a remainder for one (1) or more different certified advanced manufacturing investments in the same taxable year.

Sec. 13. (a) A qualified advanced manufacturing company that proposes a qualified advanced manufacturing project may claim a job retention tax credit under this section equal to one percent (1%) of the taxpayer's income tax withholdings attributable to full-time employees working in advanced manufacturing jobs at the qualified advanced manufacturing project site.

(b) The duration of the tax credit shall be based on the number of full-time advanced manufacturing jobs maintained at the qualified advanced manufacturing project site during the term of the credit, and shall be determined as follows:

(1) A credit shall be awarded for five (5) consecutive taxable years to a taxpayer that maintains at least two thousand five hundred (2,500) advanced manufacturing jobs at the qualified advanced manufacturing project site.

(2) A credit shall be awarded for four (4) consecutive taxable years to a taxpayer that maintains at least two thousand two hundred fifty (2,250) but less than two thousand five hundred (2,500) advanced manufacturing jobs at the qualified advanced manufacturing project site.

(3) A credit shall be awarded for three (3) consecutive taxable years to a taxpayer that maintains at least two thousand (2,000) but less than two thousand two hundred fifty (2,250) advanced manufacturing jobs at the qualified advanced manufacturing project site.

(c) If during the term of the credit the number of employees drops below the amount required in subsection (b)(1), (b)(2), or (b)(3), the duration of the credit shall be adjusted accordingly.

(d) The credit amount claimed for a taxable year under this section may exceed the taxpayer's state tax liability for the taxable year, in which case the excess shall be refunded to the taxpayer.

Sec. 14. (a) A qualified advanced manufacturing company may apply to the IEDC to enter into an agreement for a tax credit under:

- (1) section 12 of this chapter;
- (2) section 13 of this chapter; or
- (3) both sections 12 and 13 of this chapter.

(b) The IEDC shall prescribe the form of the application.

Sec. 15. After receipt of an application, the IEDC may enter into an agreement with the applicant for a tax credit under section 12

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or 13 of this chapter, or both, if the IEDC determines that all the following conditions exist:

- (1) The taxpayer has prepared a plan for the use of credits under this chapter for a qualified advanced manufacturing project.
- (2) The qualified advanced manufacturing project will result in the growth or retention of full-time advanced manufacturing jobs in Indiana.
- (3) The qualified advanced manufacturing project is economically sound and will benefit the citizens of Indiana by strengthening the economy of Indiana.
- (4) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the qualified advanced manufacturing project.
- (5) The average wage that will be paid by the taxpayer to its employees at the site of the qualified advanced manufacturing project after the credit is given will be at least equal to four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.
- (6) The total cost of the qualified advanced manufacturing project will be at least seventy million dollars (\$70,000,000).
- (7) The qualified advanced manufacturing project will be completed within five (5) consecutive years, including the first year for which the credit is granted.
- (8) One (1) or more political subdivisions in which the qualified advanced manufacturing project is located have agreed to provide substantial financial support to the qualified advanced manufacturing project.

Sec. 16. The IEDC shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the qualified advanced manufacturing project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The amount of the taxpayer's state tax liability in the taxable year that immediately preceded the first taxable year in which the credit may be claimed.
- (4) The maximum tax credit amount that will be allowed for each taxable year.
- (5) A requirement that the taxpayer shall maintain operations at the qualified advanced manufacturing project site for at least ten (10) years, including the term of the tax credit.

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(6) A requirement that the taxpayer shall pay an average wage to its advanced manufacturing employees at the qualified advanced manufacturing project site in each taxable year that a tax credit is available that equals at least four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(7) A requirement that the taxpayer make at least seventy million dollars (\$70,000,000) in certified advanced manufacturing investment at the qualified advanced manufacturing project site before December 31, 2009.

(8) For a taxpayer awarded a certified advanced manufacturing investment credit under section 12 of this chapter, a requirement that the taxpayer maintain at least two thousand five hundred (2,500) full-time employees in advanced manufacturing jobs in Indiana during the term of the tax credit.

(9) For a taxpayer awarded an advanced manufacturing jobs retention credit under section 13 of this chapter, a requirement that the taxpayer maintain:

(A) at least two thousand five hundred (2,500) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for five (5) years;

(B) at least two thousand two hundred fifty (2,250) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for four (4) years; or

(C) at least two thousand (2,000) advanced manufacturing jobs at the qualified advanced manufacturing project site during the term of the credit if the credit is awarded for three (3) years; and

a requirement that the taxpayer maintain at least two thousand (2,000) advanced manufacturing jobs at the qualified advanced manufacturing project site for at least ten (10) years, including the term of the tax credit.

(10) Any other performance conditions that the IEDC determines are appropriate.

Sec. 17. (a) If the IEDC determines that a taxpayer that has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the IEDC shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department

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of state revenue of the noncompliance and request an assessment.

(b) The department of state revenue, with the assistance of the IEDC, shall state the amount of the assessment, which may not exceed the sum of:

(1) fifty percent (50%) of any credits previously awarded under section 12 of this chapter; and

(2) one hundred percent (100%) of any credits previously awarded under section 13 of this chapter.

(c) After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 18. Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for a certified advanced manufacturing investment made after December 31, 2009. However, this section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a certified advanced manufacturing investment made before January 1, 2010, forward to a taxable year beginning after December 31, 2009, in the manner provided by section 12 of this chapter.

SECTION 12. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)] IC 6-3.1-4-1, as amended by this act, and IC 6-3.1-4-2.5 and IC 6-3.1-26.2, both as added by this act, apply only to taxable years beginning after December 31, 2004.

SECTION 13. An emergency is declared for this act."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 414 as printed February 25, 2005.)

ESPICH, Chair

Committee Vote: yeas 19, nays 0.

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